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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Darla J. Epperson	Case No: '11CV1134 W JMA
Plaintiff,	Complaint For Damages
v.	Jury Trial Demanded
Bleier & Cox, LLP	
Defendant.	

INTRODUCTION

1. Darla J. Epperson, (Plaintiff), through Plaintiff's attorneys, brings this action to challenge the actions of Bleier & Cox, LLP, ("Defendant"), with regard to attempts by Defendant to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
2. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

1 3. While many violations are described below with specificity, this Complaint
2 alleges violations of the statutes cited in their entirety.

3 4. Unless otherwise stated, all the conduct engaged in by Defendant took place
4 in California.

5 5. Any violations by Defendant were knowing, willful, and intentional, and
6 Defendant did not maintain procedures reasonably adapted to avoid any such
7 violation.

8 JURISDICTION AND VENUE

9 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
10 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

11 7. This action arises out of Defendant's violations of the Fair Debt Collection
12 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
13 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
14 ("Rosenthal Act").

15 8. Because Defendant does business within the State of California, personal
16 jurisdiction is established.

17 9. Venue is proper pursuant to 28 U.S.C. § 1391.

18 10. At all times relevant, Defendant conducted business within the State of
19 California.

20 PARTIES

21 11. Plaintiff is a natural person who resides in the City of Vista, State of
22 California.

23 12. Defendant is located in the City of Encino, in the State of California.

24 13. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer"
25 as that term is defined by 15 U.S.C. § 1692a(3).

26 14. Defendant is a person who uses an instrumentality of interstate commerce or
27 the mails in a business the principal purpose of which is the collection of
28 debts, or who regularly collects or attempts to collect, directly or indirectly,

1 debts owed or due or asserted to be owed or due another and is therefore a
2 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

3 15. Plaintiff is a natural person from whom a debt collector sought to collect a
4 consumer debt which was due and owing or alleged to be due and owing from
5 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
6 1788.2(h).

7 16. Defendant, in the ordinary course of business, regularly, on behalf of himself,
8 herself, or others, engages in debt collection as that term is defined by
9 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
10 defined by California Civil Code § 1788.2(c).

11 17. This case involves money, property or their equivalent, due or owing or
12 alleged to be due or owing from a natural person by reason of a consumer
13 credit transaction. As such, this action arises out of a consumer debt and
14 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

15 **FACTUAL ALLEGATIONS**

16 18. Sometime before December 27, 2010, Plaintiff is alleged to have incurred
17 certain financial obligations to Capital One Bank (USA), N.A.

18 19. These financial obligations were primarily for personal, family or household
19 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
20 §1692a(5).

21 20. These alleged obligations were money, property, or their equivalent, which is
22 due or owing, or alleged to be due or owing, from a natural person to another
23 person and are therefore a “debt” as that term is defined by California Civil
24 Code §1788.2(d), and a “consumer debt” as that term is defined by California
25 Civil Code §1788.2(f).

26 21. Sometime thereafter, but before December 27, 2010, Plaintiff allegedly fell
27 behind in the payments allegedly owed on the alleged debt. Plaintiff currently
28 takes no position as to the validity of this alleged debt.

22. Subsequently, but before December 27, 2010, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
23. On or about December 27, 2010, Defendant caused to be filed a state collection action in the Superior Court of California, County of San Diego. This action was filed on behalf of Capital One Bank (USA), N.A. (“State Case”).
24. Defendant caused to be served the complaint in the State Case on Plaintiff.
25. Plaintiff retained the services of Hyde & Swigart, which served and filed an answer in the State Case on or about January 31, 2011.
26. Plaintiff’s counsel, Hyde & Swigart also served written discovery on Defendant, which Defendant responded to on behalf of its client, Capital One Bank (USA), N.A.
27. Defendant then cause to be filed and served a Motion for Summary Judgment on the State Case.
28. Despite having knowledge that Plaintiff was represented with regard to the claimed debt, Defendant continued to attempt to contact Plaintiff directly by telephone in an attempt to collect on the disputed account.
29. Prior to May 13, 2011, Defendant telephoned Plaintiff in an attempt to collect on the alleged, disputed, debt.
30. This communication to Plaintiff was a “communication” as that term is defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent with 15 U.S.C. § 1692g(a).
31. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b) defines that phrase, and an “initial communication” consistent with Cal. Civ. Code § 1812.700(b).
32. Defendant failed within five days after its initial communication with Plaintiff, to provide written notification containing a statement that unless Plaintiff, within thirty days after receipt of that notice, disputed the validity of

the debt, or any portion thereof, Defendant would assume the debt was valid, or failed within five days after its initial communication with Plaintiff to provide a written notice containing a statement that if Plaintiff notified Defendant in writing, within the thirty-day period that the debt, or any portion thereof, was disputed, Defendant would obtain verification of the debt or a copy of a judgment against Plaintiff and a copy of such verification or judgment would be mailed to Plaintiff by Defendant and that Defendant would provide Plaintiff with the name and address of the original creditor. This omission by Defendant violated 15 U.S.C. § 1692g.

33. Because this omission violated the language in 15 U.S.C. § 1692g, Defendant also violated Cal. Civ. Code § 1788.17 as it incorporates 15 U.S.C. § 1692g.

34. On or about May 13, 2011, Plaintiff received a letter from Defendant. This letter was a “communication” as 15 U.S.C. §1692a(2) defines that term, and a “debt collection” as that phrase is defined by Cal. Civ. Code § 1788.2(b).

35. Without the prior consent of the consumer given directly to the Defendant or the express permission of a court of competent jurisdiction, Defendant communicated with the consumer in connection with the collection of a debt when Defendant knew the consumer was represented by an attorney with respect to such debt and had knowledge of, or could have readily ascertained such attorney’s name and address. Consequently, Defendant violated 15 U.S.C. § 1692c(a)(2).

36. Because this violated certain portions of the federal Fair Debt Collection Practices Act as these portions are incorporated by reference in the Rosenthal Fair Debt Collection Practices Act, through California Civil Code § 1788.17, this conduct or omission violated Cal. Civ. Code § 1788.17.

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CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

37. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

38. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

39. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

40. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

41. The foregoing acts and omissions constitute numerous and multiple violations of the Rosenthal Act, including but not limited to each and every one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

42. As a result of each and every violation of the Rosenthal Act, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

1 WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and
2 Plaintiff be awarded damages from Defendant, as follows:

- 3 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
4 1692k(a)(2)(A);
- 5 • An award of costs of litigation and reasonable attorney's fees, pursuant
6 to 15 U.S.C. § 1692k(a)(3);
- 7 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
8 § 1788.30(b);
- 9 • An award of costs of litigation and reasonable attorney's fees, pursuant
10 to Cal. Civ. Code § 1788.30(c).

11 43. Pursuant to the seventh amendment to the Constitution of the United States of
12 America, Plaintiff is entitled to, and demands, a trial by jury.

13
14 Respectfully submitted,

Hyde & Swigart

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16
17 Date: May 24, 2011

By: /s/ Joshua B. Swigart
Joshua B. Swigart
Attorneys for Plaintiff